

AMENDED IN SENATE MAY 18, 2005

AMENDED IN SENATE MAY 4, 2005

AMENDED IN SENATE APRIL 7, 2005

SENATE BILL

No. 644

Introduced by Senator Ortiz
(Coauthors: Senators Kuehl and Romero)
(Coauthors: Assembly Members Frommer, Jones, and Laird)

February 22, 2005

An act to add Section 733 to the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 644, as amended, Ortiz. Dispensing prescription drugs and devices.

Existing law makes certain actions by a health care professional unprofessional conduct subject to disciplinary action by the licensing board regulating the health care professional.

This bill would include within those provisions, a requirement that a health care licentiate dispense drugs and devices pursuant to a lawful prescription or order except in specified circumstances, including on ethical, moral, or religious grounds asserted by the licentiate. The bill would authorize the licentiate to decline to dispense the prescription or order on that basis only if the licentiate notified his or her employer of the objection and it can be reasonably accommodated. The bill would require the licentiate's employer in those circumstances to establish protocols to ensure a patient's timely access to the prescribed drug or device.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature that health care professionals dispense prescription drugs and devices in a timely way or provide appropriate referrals for patients to obtain the necessary prescription drugs and devices, despite the health care professional's objection to dispensing the drugs or devices on ethical, moral, or religious grounds.

SEC. 2 Section 733 is added to the Business and Professions Code, to read:

733. (a) *No licentiate shall obstruct a patient in obtaining a prescription drug or device that has been legally prescribed or ordered for that patient. A violation of this section constitutes unprofessional conduct by the licentiate and shall subject the licentiate to disciplinary action by his or her licensing agency.*

(b) Notwithstanding any other provision of law, a licentiate shall dispense drugs and devices, as described in subdivision (a) of Section 4024, pursuant to a lawful order or prescription unless one of the following circumstances exists:

(a)

(1) Based *solely* on the licentiate's professional training and judgment, dispensing pursuant to the order or the prescription is contrary to law ~~or is contraindicated for the patient, or the licentiate determines that the prescribed drug or device would cause a harmful drug interaction or would otherwise adversely affect the patient's medical condition.~~

~~(b) The pharmacy does not have the prescription drug or device in its~~

(2) *The prescription drug or device is not in stock.* If an order or prescription cannot be dispensed because the drug or device is not in stock, the licentiate shall take one of the following actions:

(1)

(A) Immediately notify the patient and arrange for the drug or device to be delivered to the ~~pharmacy~~ *site* or directly to the patient in a timely ~~way~~ *manner*.

(2)

(B) Promptly transfer the prescription to another pharmacy known to stock the prescription drug or device that is ~~within a reasonable distance from the pharmacy that is transferring the prescription or order~~ *near enough to the site from which the*

1 *prescription or order is transferred, to ensure the patient has*
2 *timely access to the drug or device.*

3 ~~(3)~~

4 *(C) Return the prescription to the patient and refer the patient*
5 *to a pharmacy known to stock the prescription drug or device that*
6 *is within a reasonable distance from the referring pharmacy. The*
7 *licentiate shall make a reasonable effort to refer the patient to a*
8 *pharmacy that stocks the prescription drug or device that is near*
9 *enough to the referring site to ensure that the patient has timely*
10 *access to the drug or device.*

11 ~~(e)~~

12 *(3) The licentiate refuses on ethical, moral, or religious*
13 *grounds to dispense a drug or device pursuant to an order or*
14 *prescription. A licentiate may decline to dispense a prescription*
15 *drug or device on this basis only if the licentiate has previously*
16 *notified his or her employer, in writing, of the drug or class of*
17 *drugs to which he or she objects, and the licentiate's employer*
18 *can, without creating undue hardship, provide a reasonable*
19 *accommodation of the licentiate's objection. The licentiate's*
20 *employer shall establish protocols that ensure that the patient has*
21 *timely access to the prescribed drug or device despite the*
22 *licentiate's refusal to dispense the prescription or order. For*
23 *purposes of this—subdivision section, “reasonable*
24 *accommodation” and “undue hardship” shall have the same*
25 *meaning as applied to those terms pursuant to—subdivision(1)*
26 *subdivision (e) of Section 12940 of the Government Code.*

27 ~~(d)~~

28 *(c) For the purposes of this section, “prescription drug or*
29 *device” has the same meaning as the definition in Section 4022.*

30 ~~(e)~~

31 *(d) The provisions of this section shall apply to the drug*
32 *therapy described in paragraph (8) of subdivision (a) of Section*
33 *4052.*

34 *(e) This section imposes no duty on a licentiate to dispense a*
35 *drug or device pursuant to a prescription or order without*
36 *payment for the drug or device, including payment directly by the*
37 *patient or through a third party payer accepted by the licentiate*
38 *or payment of any required copayment by the patient.*

O